

all references to the transferring carrier (or old name) and substitute references to the successor carrier (or new name) in their place.

(iii) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(iv) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

(e) *Cancellation*—(1) *Tariffs*. (i) An entire tariff may be canceled by the filer, or by the Commission for good cause, by appropriately changing the expiration date in the tariff record. See § 514.11(b).

(ii) Cancellation of a tariff due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff may take effect on the same day it is filed.

(iii) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than for seasonal discontinuance) shall be canceled within 60 days after the cessation of operations.

(2) *Essential terms*. The statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired. In the event a contract is terminated under § 514.7(l)(1)(ii), the effective date of the termination shall be used as the date of cancellation (contract termination date under § 514.17(d)(5)).

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992]

§§ 514.5—514.6 [Reserved]

Subpart B—Service Contracts

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability*. Service contracts shall apply only to transpor-

tation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves and amendments thereto (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality*. All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(c) *Exempt commodities*. Except as provided in paragraphs (c)(1) and (c)(2) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(1) *Inclusion in service contracts*. An exempt commodity listed in this paragraph may be included in a service contract filed with the Commission, but only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or

(ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Waiver of exemption*. Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

(d) *Service contracts with non-vessel-operating common carriers*. No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under this part and part 583 of this chapter.

(e) *Certification of shipper status*—(1) *Certification.* The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract. The certification shall be signed by the contract party.

(2) *Proof of tariff and bond.* If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier or conference shall obtain proof that such NVOCC has a tariff and a bond as required under section 8 and 23 of the 1984 Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list published by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24).

(3) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (e)(2) of this section prior to any shipments under the contract.

(4) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier or conference executing a service contract shall be deemed to have complied with section 10(b)(15) of the 1984 Act upon meeting the requirements of paragraphs (e)(1) and (e)(2) of this section, unless the ocean common carrier had reason to know such certification or documentation of NVOCC tariff and bonding was false.

(f) *Availability of essential terms.* A statement of the essential terms of each initial and amended service contract, as set forth in tariff format, shall be made available for inspection by the general public pursuant to the

requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial or amended service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract or amendment thereto under § 514.17, as may be adjusted under paragraph (j)(4) of this section, except that, where a shipper or shippers' association not a party to the original contract exercises its right to access the amended contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) *Me-too requests and replies.* (i) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section, and no additional statement of essential terms need be filed. The letter transmitting the service contract itself for filing, however, shall indicate

that it is a “me-too” contract and reference the essential terms FMC File Number. See § 514.17(d)(4)(i).

(4) *Changes in me-too contracts.* In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(7)(viii), the new essential term(s) shall be immediately made available in writing to other shippers and shippers’ associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

(g) *Filing of service contract materials.* Authorized persons under § 514.4(d)(5) shall file with BTCL the following:

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in an envelope, which contains no other material, addressed to: “Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.” The envelope shall state “This Envelope Contains a Confidential Service Contract.” If multiple service contracts are filed in an envelope, the pages of each individual contract should be fastened together. The top of each page of a filed service contract shall be stamped “Confidential.”

(2) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (g)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent or amended essential terms to similarly situated shippers under paragraphs (f)(1) or (f)(4) of this section;

(ii) Termination under paragraph (l)(1)(ii) of this section by mutual agreement, breach or default not covered by the service contract;

(iii) The adjustment of accounts, by rerating, liquidated damages, or other-

wise under paragraph (l) of this section;

(iv) Final settlement of any account adjusted as described in paragraph (g)(2)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under paragraph (h)(1)(v) of this section; or

(B) The list of affiliates under paragraph (h)(1)(vi) of this section of any contract party entitled to receive or authorized to offer services under the contract.

(h) *Form and content.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) *On the first page, preceding any other provisions:* (i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix “SC” (see § 514.17(d)(2));

(ii) The ATFI number (“Tariff # _____”) of the carrier’s or conference’s essential terms publication (See §§ 514.11(b) and 514.17(b));

(iii) A reference to the statement of essential terms numbers, as follows:

(A) “ET Number _____” as provided in § 514.17(d)(2)(i); and,

(B) “FMC File Number _____” as provided in § 514.17(d)(4)(i).

(iv) The ATFI number(s) (“Tariff # _____”) of the tariff(s) of general applicability;

(v) The typewritten legal names and business addresses of the contract parties; the typewritten legal names of affiliates entitled to access the contract; and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Carriers and/or conferences which enter into contracts which include affiliates must in each instance either:

(A) list the affiliates’ business addresses; or

(B) certify that this information will be provided to the Commission upon request within 10 business days of such request (These requirements will apply to previously-filed contracts amended after March 13, 1996). However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the

amendment adds new parties or affiliates, subsequent references in the contract to the contract parties shall be consistent with the first reference (*e.g.*, (exact name), "carriers," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

(2) *On the second and subsequent pages:* (i) The complete terms of the contract, including:

(A) All essential terms as required under § 514.17, preferably in the order and format prescribed by § 514.17(d);

(B) Other terms of the contract; and

(C) Section 514.7(h)(2)(i)(A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the true and complete contract.¹

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under paragraph (m) of this section; and

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Tariff Rule 21 (§ 514.15(b)(21)) and the applicable tariff number only.

¹ See Exhibit II of this part for an example of an abbreviated format service contract.

(3) *On the signature page:* (i) Signatures of all necessary contract parties; and

(ii) A certification of shipper status in accordance with paragraph (e) of this section.

(i) [Reserved]

(j) *Contract rejection and notice; implementation—(1) Initial filing and notice of intent to reject—*(i) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract or amendment thereto was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) *Rejection.* The Commission may reject an initial or amended contract and/or statement of essential terms if:

(i) The initial or amended service contract is not filed within 10 days of the electronic filing of its associated essential terms;

(ii) A mandatory essential term or 30-day me-too notice is missing; or

(iii) Under a notice of rejection pursuant to paragraph (j)(1) of this section, if the objectionable contract or statement of essential terms:

(A) Is not resubmitted within 20 days of the notice of intent to reject; or

(B) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (j)(1)(ii) of this section, but still does not conform to the form, content or filing requirements of the Act or this part.

(3) *Implementation; prohibition and re-rating.* (i) Performance under a service contract or amendment thereto may

begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

(A) Further or continued implementation of the service contract is prohibited;

(B) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(C) Detailed notice shall be given to the Commission under paragraph (g)(2) of this section within 30 days of:

(1) The rerating or other account adjustment resulting from rejection under this paragraph; and

(2) Final settlement of the account adjusted under paragraph (j)(3)(ii)(C)(1) of this section.

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraphs (j)(1)(i) and (j)(2) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) Modification, correction and cancellation of service contract terms.

(1) *Modifications.* (i) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract and shall be electronically filed with the Commission under § 514.17.

(ii) Amended service contracts shall be filed with the Commission pursuant to paragraph (g) of this section.

(iii) Any shipper or shippers' association that has previously entered into a service contract which is amended pur-

suant to this paragraph may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a \$233 service fee, and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected.

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(3) Filing and availability of corrected materials.

(i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(3)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed

service contract but not also in the relevant essential terms.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(4) *Cancellation.* See paragraph (1) of this section and § 514.4(e)(2).

(1) *Accounting adjustments; rerating; notice—(1) Account adjustment; rerating—(i) Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(7)(vii), or the occurrence of an event described in § 514.17(d)(7)(viii).

(ii) *Mutual termination or shipper failure to meet cargo minimum not covered by the contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(A) Further or continued implementation of the service contract is prohibited; and

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment.

(2) *Notice to contract party.* A proposed final accounting or rerating under this section shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(i) Liability for liquidated damages under § 514.17(d)(7)(vii);

(ii) The occurrence of an event under § 514.17(d)(7)(viii); or

(iii) Termination, breach or default not covered by the contract.

(3) *Notice to Commission.* Detailed notice of any termination, rerating, and/or account adjustments, as well as final settlement of an adjusted account, shall be given to the Commission under paragraph (g)(2) of this section.

(m) *Record keeping and audit—(1) Records retention for five years.* Every common carrier or conference shall

maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(2) [Paragraph (m)(2) is stayed until further notice.] *Where maintained.* (i) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

(ii) If service contract records are not made available to the Commission as provided in paragraph (m)(3) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (m)(2)(i) of this section.

(3) *Production for audit within 30 days of request.* Every common carrier or conference shall, upon written request of the FMC's Director, Bureau of Enforcement or any Area Representative, submit requested service contract records within 30 days from the date of the request.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 46322, Oct. 8, 1992; 58 FR 27, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 61 FR 5309, Feb. 12, 1996; 61 FR 51233, Oct. 1, 1996; 62 FR 63463, Dec. 1, 1997; 63 FR 50536, Sept. 22, 1998]

EFFECTIVE DATE NOTE: (1) At 57 FR 36271, Aug. 12, 1992, the effectiveness of paragraph (m)(2) was stayed until further notice. The agency will publish a document in the FEDERAL REGISTER indicating when the stay is terminated.

(2) At 63 FR 50536, Sept. 22, 1998, § 514.7(k)(2) introductory text was revised, effective Nov. 2, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(k) * * *

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests